

## REMARKS

This communication is in response to the Office Action that issued September 6, 2011 (the “**Office Action**”). Claims 25-33 are currently pending; claims 1-25 were previously cancelled.

Claims 25-28 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over United States Patent no. 5,125,893 to Dryden (“**Dryden**”) in view of United States Patent no. 5,249,598 to Schmidt (“**Schmidt**”). Claims 29-30 stand rejected under §103(a) as allegedly unpatentable over Dryden in view of Schmidt and further in view of United States Patent no. 6,446,671 to Armenia et al. (“**Armenia**”). The Examiner does not state the statutory grounds for rejection of claims 31-33; it appears claims 31 and 32 stand rejected under §103(a) as unpatentable over Dryden in view of Schmidt. Reconsideration is respectfully requested in view of the remarks that follow.

### **Claim Rejections - 35 USC 103(a)**

The Examiner bases the current rejection on the assertion that Dryden teaches the slitted flow control membrane required in claim 25 of the instant application.<sup>1</sup> Applicants note that Dryden does not teach a slitted membrane, stating instead that “[s]ince the valve 23 is a reed-type valve or may be an iris valve, very little leakage in a direction opposite arrow 38 into the bag 26 will occur. So there is no difficulty with the bag trying to inflate and pull the catheter out.”<sup>2</sup> A reed-type valve is known in the art to comprise a contiguous flap or membrane that opens by hinging and which only admits one-way flows. An iris valve is known to comprise a manually controlled iris which seals to prevent flows in any direction across the valve. The

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<sup>1</sup> Office Action, pp. 2-3. The Examiner specifically analogizes “valve 23” of Dryden to the slitted flow control membrane required by the instant claims.

<sup>2</sup> Dryden, col. 2, lines 60-64.

specification of the present application makes clear that the structure of the claimed slitted flow control membrane does not comprise either an iris-type or a reed-type valve:

A common PASV comprises a flexible membrane with a slit extending therethrough. The slit is biased to a closed position by the flexibility of the membrane and/or additional biasing members when the catheter is not in use (i.e., when a fluid pressure within the catheter is below a threshold level). When the catheter is in use, edges of the slit are pushed apart by the pressure of the fluid impinging on the membrane, and the fluid passes through the PASV.<sup>3</sup> (Emphasis added.)

Applicants note that the claimed slitted flow control membrane may be opened by fluid pressures in excess of a certain threshold in either direction, and that such opening and closing is not user controllable. Not only is the claimed flow control membrane distinct, structurally and functionally, from what is taught by Dryden, but the functional distinction renders the claimed flow control membrane incompatible with the invention of Dryden. Dryden teaches away from using valves that open bi-directionally or which cannot be manually closed off, such as the slitted flow control membrane as claimed or the valve disclosed in Schmidt.<sup>4</sup> Dryden teaches that retrograde flows (relative to the inflatable bag of Dryden) must be prevented, otherwise the inevitable inflation of the bag will pull the catheter tip backwards away from the region where it is being used to apply suction and/or fluid. One skilled in the art will appreciate that the structure recited in claim 25 does not meet this requirement of Dryden.

A prima face case of obviousness requires that the prior art reference or references render the invention as a whole obvious, and the entire disclosure of the prior art must be considered, including disclosures that teach away from the claimed invention.<sup>5</sup> For at least the reasons discussed above, Dryden cannot support a prima facie rejection of claim 25 or any claims depending therefrom. Withdrawal of the all rejections under §103(a) is therefore respectfully requested.

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<sup>3</sup> See published specification, ¶ [0012].

<sup>4</sup> See e.g. Schmidt Figs. 4-6.

<sup>5</sup> MPEP §§ 2142, 2145D.

**Request for Interview**

Applicants believe that prosecution of this case may be advanced by an Examiner interview, and such action is respectfully requested prior to the next office action on the merits.

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### CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is respectfully requested.

In the event that there are any questions concerning this Amendment, or the application in general, the Examiner is respectfully urged to telephone Applicants' undersigned representative so that prosecution of the application may be expedited.

The Director is hereby authorized to charge any additional fees which may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-4047 (7061822001).

Respectfully submitted,

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